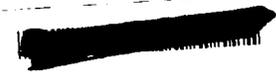


ttab

**TRADEMARK**

  
01-09-2004  
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Attorney Docket No. 000291-009701US

Date of Deposit: January 5, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service by "First Class Mail" service under 37 CFR 1.8 on the date indicated above and is addressed to the Commissioner for Trademarks, Box TTAB FEE, 2900 Crystal Drive, Arlington, VA 22202-3514.

TOWNSEND AND TOWNSEND AND CREW LLP

By: Mary L. Shapiro  
Mary L. Shapiro

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOSEPH ENTERPRISES, INC.

Opposer,

v.

NEOPETS, INC.

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Application No.: 76/389,091  
Filed: March 28, 2002  
Published: December 30, 2003  
Mark: CHIA

Commissioner for Trademarks  
BOX TTAB FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Sir:

Opposer JOSEPH ENTERPRISES, INC., a California Corporation, having a business situs and address at 425 California Street, Suite 1300, San Francisco, California 94104, believes that it will be damaged by the registration of the mark CHIA shown in U.S. Trademark Application Serial No. 76/389,091, filed March 28, 2002 by NEOPETS, INC., a Delaware corporation, having a principal place of business at 412 West Broadway Avenue, Suite 300, Glendale, CA 91204, and hereby opposes registration thereof.

As grounds for the opposition, Opposer alleges that:

1. By this application, Applicant is seeking to obtain registration upon the Principal Register of the mark **CHIA** for use with "toys, games and playthings, namely, toy vehicles, toy action figures and accessories for use therewith; dolls, doll clothing and doll accessories; children's multiple activity toys; plush toys; stuffed toys; plastic and vinyl toy characters and toy animals; toy figures; radio-controlled toy vehicles; mechanical toys; wind-up toys; water squirting toys; musical toys; inflatable toys; jigsaw puzzles; equipment sold as a unit for playing board, parlor, skill and action, card, role-playing, and electronic hand-held unit for playing games."

2. Opposer owns incontestable United States registrations for the mark **CHIA**: Registration No. 1,859,361 for "growing mix for plants; kit comprising plastic cup and saucer, growing medium, and seeds; clay animals used as planters, and clay replicas of plants used as planters, and flower, vegetable and herb seeds" and Registration No. 2,090,156 for "clothing for men, women and children, namely, shirts, shorts, pants, sweatshirts, tee shirts, hats, caps, jackets, underwear, socks, ties, scarves, and sweaters." Opposer also owns incontestable registrations for the mark **CHIA HEAD** (Registration No. 2,076,769) for "terra cotta figurines used as planters" and the mark **CHIA TREE** (Registration No. 1,605,619) for "clay replicas of plants used as planters."

3. Opposer is the owner of additional registrations and applications for "**CHIA**" marks, including but not limited to: Registration No. 2,306,061 for the mark **CHIA PET** for "clay animals used as planters;" Registration No 2,773,363 for the mark **CHIA HERB GARDEN** for a "kit comprising terra cotta cup and saucer, growing medium, and seeds;"

Application No. 76/416,852 for the **CHIA** mark for "plush toys; puppets; toys, namely, baby multiple activity toys, bath toys, crib toys, infant toys, party favors in the nature of small toys, plastic character toys, building blocks, mobiles, basket balls, baseballs, beach balls, foot balls, rubber action balls, sport balls, and volley balls; games, namely, board games, card games, party games, video games, and video game interactive hand held remote controls for playing electronic games;" and Application No. 76/416,818 for the **CHIA** mark for "hobby craft sets for gardening comprising seed, growing pots, and growing media; holiday decorations for Christmas." (hereafter collectively referred to as "Opposer's Marks" or the "**CHIA** Marks").

4. True and correct copies of Opposer's registrations referenced above from the official records of the USPTO Trademark Electronic Search System are attached hereto as Exhibit A.

5. Since at least as early as 1977, Opposer has used the **CHIA** trademark for clay animals used as planters. The goods described under the aforementioned registrations have been extensively advertised and marketed under Opposer's Marks throughout the United States. By virtue of its efforts and the expenditure of considerable sums for promotional activities and the high quality of its products, Opposer has created widespread goodwill under Opposer's Marks throughout the United States in connection with such goods.

6. As a result of Opposer's extensive advertising and marketing, Opposer's Marks are famous marks that are well known to purchasers.

7. Opposer's Marks have become a valuable asset of Opposer and principal symbols of its extensive goodwill. By reason of such wide use of Opposer's Marks, the trade and

purchasing public have come to recognize Opposer's Marks as signifying Opposer and as identifying Opposer as the source of the goods offered under Opposer's Marks.

8. Application Serial No. 76/389,091 for the proposed **CHIA** mark, opposed herein, was filed as an Intent-to-Use application on March 28, 2002, after registrations for Opposer's Marks had issued (with the exception of Registration No 2,773,363, which issued on October 14, 2003).

9. Applicant's proposed mark is identical to the mark registered by Opposer in Registration Nos. 1,859,361 and 2,090,156 and so resembles Opposer's Marks so as to be likely to cause confusion, mistake, or deception in the trade and among purchasers as to the source, origin, or sponsorship of Applicant's goods.

10. The goods identified in Application Serial No. 76/389,091 and the goods offered under Opposer's Marks are related and are the type which could be sold in the same channels of trade and to the same prospective purchasers.

11. Because Applicant's proposed mark so resembles Opposer's Marks, is used on related goods, and Applicant offers its goods to purchasers or prospective purchasers of the goods offered under Opposer's Marks, the trade and purchasing public are likely to believe that Applicant's goods originate from Opposer or from an entity that is in some way associated with Opposer, thus resulting in damage and detriment to Opposer and its reputation, as well as to the purchasing public.

12. Registration and use of Applicant's proposed mark shown in the opposed application are likely to dilute Opposer' famous **CHIA** Marks.

13. Opposer has challenged Applicant's use of the **CHIA** mark, the mark that is the subject of the application opposed herein. Opposer is the plaintiff in a lawsuit against Applicant, alleging trademark infringement, dilution, and violation of the anti-cybersquatting consumer protection act, which was filed on June 3, 2002 in the United States District Court, Northern District of California.

14. Registration of Applicant's proposed mark shown in the opposed application will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) and § 43(c) of the Lanham Act, 15 U.S.C. § 1125 (c), and pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in the United States Application Serial No. 76/389,091 be refused and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

Date: January 5, 2004

BY: 

Paul W. Vapnek

Mary L. Shapiro

*Attorneys for Opposer*

JOSEPH ENTERPRISES, INC.

Two Embarcadero Center, 8th Floor  
San Francisco, California 94111-3834  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300

**AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

Please charge the fee of \$300.00 to Townsend and Townsend and Crew LLP, Deposit Account No. 20-1430. Please charge any additional fees that may be due, or credit any overpayment, to our Deposit Account No. 20-1430.

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

Date:

January 5, 2004

BY:

Mary L. Shapiro

Mary L. Shapiro  
*Attorneys for Opposer*

Two Embarcadero Center, 8th Floor  
San Francisco, California 94111-3834  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300  
60110527 v1



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### Typed Drawing

**Word Mark** CHIA

**Goods and Services** IC 001. US 001. G & S: growing mix (potting mix) for plants. FIRST USE: 19920814. FIRST USE IN COMMERCE: 19920814

IC 021. US 002 010. G & S: kit comprising plastic cup and saucer, growing medium, and seeds; clay animals used as planters, and clay replicas of plants used as planters. FIRST USE: 19770908. FIRST USE IN COMMERCE: 19770908

IC 031. US 001 030. G & S: flower, vegetable and herb seeds. FIRST USE: 19920814. FIRST USE IN COMMERCE: 19920814

**Mark Drawing Code**

(1) TYPED DRAWING

**Serial Number** 74406094

**Filing Date** June 23, 1993

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** August 2, 1994

**Registration Number** 1859361

**Registration Date** October 25, 1994

**Owner** (REGISTRANT) JOSEPH ENTERPRISES, INC. CORPORATION CALIFORNIA  
425 California Street, Suite 1300 San Francisco CALIFORNIA 94104

**Attorney of Record** Paul W. Vapnek

**Prior Registrations** 1090927;1605619;1763853

**Type of Mark** TRADEMARK

**Register** PRINCIPAL-2(F)

**Affidavit Text** SECT 15. SECT 8 (6-YR).

**Live/Dead Indicator** LIVE

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### Typed Drawing

**Word Mark** CHIA

**Goods and Services** IC 025. US 022 039. G & S: clothing for men, women and children, namely, shirts, shorts, pants, sweatshirts, tee shirts, hats, caps, jackets, underwear, socks, ties, scarves, and sweaters. FIRST USE: 19960417. FIRST USE IN COMMERCE: 19960417

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 75123119

**Filing Date** June 21, 1996

**Current Filing Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** January 14, 1997

**Registration Number** 2090156

**Registration Date** August 19, 1997

**Owner** (REGISTRANT) Joseph Enterprises, Inc. CORPORATION CALIFORNIA 425 California Street Suite 1300 San Francisco CALIFORNIA 94104

**Attorney of Record** Paul W. Vapnek

**Type of Mark** TRADEMARK

**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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### Typed Drawing

<b>Word Mark</b>	CHIA HEAD
<b>Goods and Services</b>	IC 021. US 002 013 023 029 030 033 040 050. G & S: terra cotta figurines used as planters. FIRST USE: 19950915. FIRST USE IN COMMERCE: 19950915
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74685515
<b>Filing Date</b>	June 7, 1995
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	April 15, 1997
<b>Registration Number</b>	2076769
<b>Registration Date</b>	July 8, 1997
<b>Owner</b>	(REGISTRANT) Joseph Enterprises, Inc. CORPORATION CALIFORNIA 425 California Street Suite 1300 San Francisco CALIFORNIA 94104
<b>Attorney of Record</b>	PAUL W. VAPNEK
<b>Prior Registrations</b>	1090927;1605619;1859361
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHIA" APART FROM THE MARK AS SHOWN

**Type of Mark**      TRADEMARK  
**Register**            PRINCIPAL  
**Affidavit Text**     SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator**      LIVE

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### Typed Drawing

<b>Word Mark</b>	CHIA TREE
<b>Goods and Services</b>	IC 021. US 002 030. G & S: CLAY REPLICAS OF PLANTS USED AS PLANTERS. FIRST USE: 19891004. FIRST USE IN COMMERCE: 19891004
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74007654
<b>Filing Date</b>	December 4, 1989
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	April 17, 1990
<b>Registration Number</b>	1605619
<b>Registration Date</b>	July 10, 1990
<b>Owner</b>	(REGISTRANT) JOSEPH ENTERPRISES CORPORATION CALIFORNIA SUITE 1300 425 CALIFORNIA STREET SAN FRANCISCO CALIFORNIA 94104
<b>Attorney of Record</b>	PAUL W. VAPNEK
<b>Prior Registrations</b>	1090927
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHIA" APART

FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20010505.  
**Renewal** 1ST RENEWAL 20010505  
**Live/Dead Indicator** LIVE

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### Typed Drawing

**Word Mark** CHIA PET  
**Goods and Services** IC 021. US 002 013 023 029 030 033 040 050. G & S: clay animals used as planters. FIRST USE: 19770908. FIRST USE IN COMMERCE: 19770908  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 75584901  
**Filing Date** November 6, 1998  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** October 12, 1999  
**Registration Number** 2306061  
**Registration Date** January 4, 2000  
**Owner** (REGISTRANT) JOSEPH ENTERPRISES, INC. CORPORATION CALIFORNIA  
 425 California Street, Suite 1300 San Francisco CALIFORNIA 94104  
**Attorney of Record** Paul W. Vapnek  
**Prior Registrations** 1605619;1763853;1823950;1859361;2076769;2090156  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CHIA" APART

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**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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### Typed Drawing

**Word Mark** CHIA HERB GARDEN

**Goods and Services** IC 021. US 002 013 023 029 030 033 040 050. G & S: Kit comprising terra cotta cup and saucer, growing medium, and seeds. FIRST USE: 19920814. FIRST USE IN COMMERCE: 19920814

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 76459538

**Filing Date** October 21, 2002

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 22, 2003

**Registration Number** 2773363

**Registration Date** October 14, 2003

**Owner** (REGISTRANT) JOSEPH ENTERPRISES, INC. CORPORATION CALIFORNIA  
425 California Street, Suite 1300 San Francisco CALIFORNIA 94104

**Attorney of Record** Mary L. Shapiro

**Prior Registrations** 1763853;1823950;1859361;2306061;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HERB" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL-2(F)  
**Live/Dead Indicator** LIVE

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